services exists, the providers will maximize their available coverage and potential to meet the market demands accordingly."[311/] It determined instead to examine future applications for new and replacement systems "to ensure that such system will be operated efficiently in light of technical and other conditions existing at the time of filing[,]" and stated that it was proposing an annual reporting requirement to assist it "in making such determinations, and to monitor the evolution and operation of [the] new service."[312/] In other words, the reporting requirement adopted in the NVNG MSS proceeding and proposed for adoption here, was intended to be a surrogate for codified efficiency standards.

In this proceeding, by contrast, the Commission has proposed two efficiency standards: the requirements that MSS Above 1 GHz applicants demonstrate their ability to meet certain global and U.S. coverage levels. The only technically qualified applicants will be those that can satisfy these standards. In short, the Commission's rationale for proposing a reporting requirement for the NVNG MSS does not apply to the MSS Above 1 GHz service.

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311/ NVNG MSS NPRM, 8 FCC Rcd at 6332 (footnote omitted).

312/ Id. The resulting rule, 47 C.F.R. § 25.142(c), is essentially the same as Proposed Rule 25.143(e)(1).

### 2. The Reporting Requirements, As Proposed, Do Not Provide Sufficient Protection To MSS Above 1 GHz System Licensees' Proprietary And Commercially Sensitive Data.

Whether or not the Commission decides to go forward with its proposed reporting requirement, TRW urges it to take measures to protect proprietary and commercially sensitive data that may be included in the annual reports, and to modify certain of the requirements themselves.[313/] The NPRM does not even contain any provision that informs the putative filers of the proposed reports that they may seek confidential treatment of included material or otherwise shield the material from public dissemination.[314/]

In TRW's view, the commercial sensitivity of much of the information to be included in the annual reports, the competitive injury that would ensue from a requirement to disclose it, the fact that certain of the terms included in the proposed reporting rule (e.g., "capacity") are lacking in objective meaning, and the confused function of such difficult to quantify variables as interference, data transmission rates, satellites in view, and points of measurement, all militate against the type of reporting requirements that are proposed in the NPRM.

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313/ For example, the requested information on the degree of system utilization and the frequency and duration of space station or system malfunctions are precisely the types of information that are subject to exploitation and abuse in a competitive environment such as the MSS Above 1 GHz service will be.

314/ Compare NVNG MSS Order, 8 FCC Rcd at 8453 & n.20.

TRW is aware that similar arguments were advanced against the Commission's proposed reporting requirements in the NVNG MSS proceeding, and that the Commission concluded that its need for the information outweighed any claims by NVNG MSS operators regarding the burdensomeness of the requirement or the lack of public interest benefits to be derived therefrom.[315/] In anticipation of a possible analogous response to its arguments here, TRW, in the alternative, proposes several ways in which the annual reporting requirements of Proposed Rule 25.143(e)(1) can be modified and still provide the Commission with the information it claims to need. The changes TRW proposes to clarify the requirements are listed in the table at the top of the next page.

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315/ See NVNG MSS Order, 8 FCC Rcd at 8453.

| PROPOSED RULE | COMMISSION'S PROPOSAL | TRW'S PROPOSED REVISION |
|---|---|---|
| 25.143(e)(1)(ii) | "A listing of any non-scheduled space station outages for more than 30 minutes and the cause or causes of the outage." | "A listing of any non-scheduled space station outage that interrupted service for more than 30 minutes, and the cause(s) of the outage." |
| 25.143(e)(1)(iii) | "A detailed description of the utilization made of the in-orbit satellite system. That description should identify the percentage of time that the system is actually used for U.S. domestic or transborder transmission, the amount of capacity (if any) sold but not in service within U.S. geographic areas, and the amount of unused system capacity." | "A detailed description of the status of the system that identifies all instances where the system capacity is saturated during U.S. domestic or transborder service, including the dates and duration of such saturation." |
| 25.143(e)(1)(iv) | "Identification of any space stations not available for service or otherwise not performing to specifications, the cause or causes of these difficulties, and the date any space station was taken out of service or the malfunction identified." | "Identification of any space stations that exhibit performance trends that could lead to the need to deploy a replacement satellite and an estimate of when said replacement is expected to be needed." |

The changes proposed by TRW do not diminish the quantity or reliability of the information coming to the Commission; they merely attempt to fulfill the Commission's information-gathering objectives in a way that minimizes the intrusiveness of the reports as much as possible. TRW remains concerned, however, that the Commission's purposes in requesting information on topics as broad and

diverse as capacity utilization and system health are both inchoate and ill-defined. In reviewing its proposed information-gathering requirements, the Commission should examine and clearly state its reasons for requesting the information and the uses to which the information it gathers will be put.

In sum, if the Commission does not believe that the annual reporting requirements it proposes are unnecessary for the MSS Above 1 GHz service, TRW urges the Commission to consider revising the information it is proposing to request. At the very least, it must state with clarity the reasons it is seeking the data it ultimately decides to collect. In addition, the Commission should make clear that any information as to system capacity and outages is proprietary to the system operator, and thus would not be routinely available for public inspection.

## F. OTHER MATTERS

### 1. TRW Concurs With The Commission's Proposal Not To Adopt Specific Obligations Concerning Distress And Safety Communications.

The Commission, taking note of the extraordinary range of service possibilities that MSS Above 1 GHz systems portend, observes that these systems have the potential to complement existing search and rescue services and disaster response

efforts.[316/] The Commission also states that under Sections 321(b) and 359 of the Communications Act,[317/] MSS Above 1 GHz system licensees operating on U.S. territorial waters are required to give priority to radiocommunications or signals relating to ships in distress, and to cease transmitting on frequencies that will interfere with distress signals. In addition, stations on board ships must transmit information concerning severe weather conditions or dangerous ice to other area ships and land-based authorities.[318/]

To the extent that TRW and other MSS Above 1 GHz systems would be implicated by the requirements of Sections 321(b) and 359 of the Communications Act, TRW accepts its obligations. However, TRW fully concurs with the Commission's determination not to impose requirements other than those mandated in the Act.[319/]

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316/ See NPRM, 9 FCC Rcd at 1137 (¶ 86).

317/ See 47 U.S.C. §§ 321(b) & 359.

318/ See NPRM, 9 FCC Rcd at 1137 (¶ 86).

319/ See id. at 1154, Appendix A (Proposed Rule 25.143(f)).

### 2. MSS Above 1 GHz System Licensees Should Have All The Rights And Privileges Of Fixed Satellite Licensees In Operating Gateway And TT&C Stations.

TRW supports the Commission's proposed licensing of central, fixed-earth "gateway" stations operating in the feeder link frequency bands, and tracking, telemetry and command ("TT&C") earth stations operating in either the feeder link or MSS bands, as FSS earth stations under Part 25.[320/] TRW requests that the Commission acknowledge, however, that MSS Above 1 GHz gateway and TT&C stations will be accorded all the rights and privileges of stations operating in the FSS. As the gateway and TT&C stations of Odyssey and other MSS Above 1 GHz systems will serve the same functions as earth stations in the FSS, they deserve identical regulatory status.

### 3. TRW Generally Supports The Commission's Proposed Blanket Licensing Approach For The Operation Of User Transceivers.

In general, TRW supports the Commission's proposal to use a blanket licensing approach for MSS Above 1 GHz mobile user transceivers, similar to the licensing approach it has used for other mobile satellite services.[321/] TRW agrees

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320/ See NPRM, 9 FCC Rcd at 1138-40 (¶¶ 88-90).

321/ See id. at 1138-39 (¶ 88).

with the additional proposed requirement that end users must obtain authorization from space station operators, either directly or through an authorized vendor, before they may transmit to the operator's satellite system. TRW also agrees that, once an end user has obtained authority to access a particular system, the operations of his or her user transceiver should fall under the blanket earth station license held by the space station operator or vendor.[322/]

### 4. International Coordination

The Commission has identified various potential international coordination, consultation and notification requirements potentially applicable to the MSS above 1 GHz service.[323/] TRW is in general agreement with the Commission that these systems will likely require global coordination, and also that "successful" coordination under ITU Resolution No. 46 is not a prerequisite to licensing of the systems nor their launch and operation.[324/] Any conclusion to the contrary could result in any country with whom the United States initiates a coordination procedure being in the position to hold up the launch of satellite systems simply by not concluding a given coordination.

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322/ See id. at 1139 (¶ 89).

323/ See NPRM, 9 FCC Rcd at 1140 (¶¶ 91-92).

324/ Id.

TRW is concerned, however, with the Commission's conclusion that it will continue to require United States licensees to meet any national requirement imposed by other licensing administrations regarding operations within their territories.[325/] It is conceivable that other administrations may impose requirements which are inconsistent with operational requirements established in the instant proceeding. What is a system operator to do under these circumstances? Furthermore, the Commission's proposed approach is tantamount to incorporating by reference the regulatory requirements of other countries into the Commission's regulations governing the MSS above 1 GHz service.

TRW does not believe it is necessary for the Commission to insist on this latter requirement. Realistically, in order for any satellite system to provide service within a particular country, the system operators will need to abide by local requirements. Other administrations are capable of policing adherence to their requirements and this should suffice to satisfy the Commission's concerns that its licensees be "good citizens". There is no need for the Commission to add any additional requirement to its regulatory structure for the MSS above 1 GHz service. Licensees should be given the optimum flexibility in dealing with the requirements of foreign administrations, and in trying to resolve inconsistencies and problematic requirements.

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325/ Id. at 1140 (¶ 92).

Otherwise, TRW is in general agreement with the Commission's approach to international coordination issues and will work with the Commission to align its Odyssey system within the framework of these procedures.

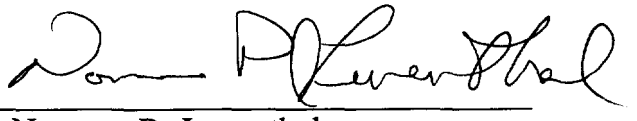
## CONCLUSION

Based upon the foregoing discussion of the policy issues raised in this proceeding, TRW urges the Commission to move forward expeditiously to adopt a Report & Order based on the framework set forth in the NPRM, but containing the necessary refinements proposed herein. Most significantly, the Commission should clarify its threshold qualifications standards in the manner suggested in Section I, and then adopt service rules that take into account the constraints that GLONASS will place on the lower L-band portion of the spectrum allocated for MSS Above 1 GHz. Accordingly, the Commission should adopt the adjustments in the spectrum sharing plan set forth by TRW in Section II(A). Along with TRW's other suggested alterations to the service rules proposed in the NPRM, these changes will ensure that each applicant is treated even-handedly, and that opportunities remain open for future entrants. Finally, the Commission should announce that it does not intend to regulate

MSS Above 1 GHz space segment providers as Commercial Mobile Radio Services in order to ensure that needed foreign investment in this service will not be stifled, and the Commission should designate immediately sufficient spectrum for feeder links for the systems now proposed.

Respectfully submitted,

TRW Inc.

By: 

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## TECHNICAL CERTIFICATE

I, Richard J. Barnett, hereby certify that I am a technically qualified consulting engineer. I have reviewed the foregoing "Comments of TRW Inc." and certify, under penalty of perjury, that the technical information presented therein is complete and accurate to the best of my knowledge and belief.

Dated this 5th day of May 1994

By: Richard Barnett

Richard J. Barnett

## CERTIFICATE OF SERVICE

I, Kaigh K. Johnson, do hereby certify that a true and correct copy of the foregoing "Comments of TRW Inc." was mailed, first-class postage prepaid, this 5th day of May, 1994 to the following:

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